

REMARKS

Applicant has reviewed the nonfinal Office Action of December 6, 2006. Claims 1-33 have been cancelled. New claims 34-42 have been added. Claims 34-42 are pending. Reconsideration is requested.

Independent claim 34 recites the limitation that the pH of the habitat is lowered to less than 5. Support for this limitation can be found in the paragraph bridging pages 9 and 10 of the specification.

The Examiner requested the first paragraph of the specification be updated to reflect the status of the parent application. The paragraph has been amended as requested.

The Examiner noted that no Information Disclosure Statement had been submitted. Applicants have submitted an IDS which includes the references cited in the parent application. Pursuant to MPEP § 609.02, Applicants request the same references be printed on the front of any patent which issues from this application.

The Examiner objected to certain claims. As claims 1-33 have been cancelled, these objections are believed to be moot.

The Examiner rejected some claims under 35 U.S.C. 112, second paragraph, as allegedly being indefinite. As the basis for the rejection applies to some of the new claims, Applicants traverse the rejection.

According to the Examiner, the cited ranges were indefinite because the words "from" and "about", when used together, are mutually exclusive. Applicant had not defined to what extent the word "about" modifies the recited range. This rejection may apply to instant claims 39-42, which use phrases such as "about 500 ppm".

In response, Applicants refer to MPEP § 2173.05(b). Applicants submit that one of skill in the art would be reasonably apprised of the scope of the invention. Applicants also note that in instant claims 39-42, the term "about" modifies a definite, invariable amount, such as 500 ppm. This section also specifically discusses the term "about". Applicants believe the claims are definite and request withdrawal of the indefiniteness rejection.

Claims 10-12, 14-16, and 28-33 were rejected under 35 U.S.C. 101 over claims 5-7, 10, 30, and 34 of prior U.S. Patent No. 6,749,804.

Claims 1-8 and 21-27 were rejected under 35 U.S.C. 101 over claims 1-12 and 20-26 of prior U.S. Patent No. 6,616,892.

As the rejected claims have been cancelled, these rejections are believed to be moot. Applicants note that none of the claims in these two patents discussed a pH. Thus, these double patenting rejections do not apply to the instant claims.

Claims 1-9, 13, and 17-27 were rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-16 and 26-39 of U.S. Patent No. 6,749,804.

Claims 9-20 and 28-33 were rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-12 and 20-30 of U.S. Patent No. 6,616,892.

Applicants traverse these rejections together. Terminal Disclaimers have been submitted against these two references. Applicants request withdrawal of the double patenting rejections.

CONCLUSION

For the reasons detailed above, it is respectfully submitted all claims remaining in the application (Claims 34-42) are now in condition for allowance. Withdrawal of the rejections and issuance of a Notice of Allowance is requested.

In the event the Examiner considers personal contact advantageous to the disposition of this case, he is hereby authorized to call Richard M. Klein, at telephone number 216-861-5582, Cleveland, OH.

It is believed that no fee is due in conjunction with this response. If, however, it is determined that fees are due, authorization is hereby given for deduction of those fees, other than the issue fees, from Deposit Account No. 06-0308.

Respectfully submitted,

FAY SHARPE LLP

March 16, 2007
Date

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